IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.31 OF 2002

Shri.Janu Budhya Amble]
AGe 35 yrs. Occ: Agri.]
and Labourer,]
Indian Inhabitant]
Residing at :Village]
Ghodsakhar, Tal.Wada,]
Dist.Thane, (The petitoner]
is in Central Jail Yeroda]
Pune.]..Appellant
Ori.Accused

Vs.

The State of Maharashtra]..Respondent

...

None for Appellant
Mr.D.P.Adsule, A.P.P. for the State

...

CORAM: SMT.V.K.TAHILRAMANI,J.

DATE : JULY 7,2005

ORAL JUDGMENT:

1. Through this appeal, the appellant-original accused has challenged the judgment and order dated 28.12.2001 passed by IInd Ad-hoc Sessions Judge, Thane in Sessions Case NO.399 of 1997. By the said judgment and order, the learned Sessions Judge convicted the appellant under Sections 498-A and

306 of IPC. For the offence under Section 498-A, the appellant was sentenced to R.I. for one year and to pay a fine of Rs.500/- in default of payment of fine, R.I. for one month. For the offence under Section 306, the appellant was sentenced to R.I. for five years and to pay a fine of Rs.1500/- in default of fine, R.I. three months. The learned Sessions Judge directed both the sentences to run concurrently.

2. The prosecution case briefly stated is as under:

. That the appellant was married to Sangita about one year prior to the incident. The incident in the present case, has taken place on 9.4.1997. It is the prosecution case that sometime after the marriage, the appellant treated his wife Sangita well. However, thereafter, he started illtreating and harassing her and he also made demands for money. On the demands not being met, the appellant insulted, abused and beat his wife Sangita. Sangita disclosed this fact to her relatives i.e. father P.W.4 Tukaram Korde, her brother P.W.7

Santosh Tukaram Korde and other witnesses. Being fed up with illtreatment and harassment, On 19.4.1997 at about 10 a.m. Sangita poured kerosene on her person and set herself on fire. Thereafter, Sangita was shifted to hospital. It was found that she sustained about 90% burns. In the hospital, her statement came to be recorded by P.W.10 P.S.I. Gaikwad. In the said statement i.e. dying declaration (Exh.44), Sangita has clearly stated that she was subjected to illtreatment and harassment by her husband and being fed up of the same, she poured kerosene on herself and set herself on fire. The said statement was recorded by P.W.10 P.S.I.Gaikwad after making enquiries with the Doctor whether Sangita was in a fit condition to give her statement. Doctor has also put his endorsement on the dying declaration that Sangita was fit to give her statement. The said dying declaration Exh.44 is also treated as F.I.R. in the present case. On the basis of this F.I.R. the investigation commenced. After completion of investigation, the charge-sheet came to be filed.

3. In due course, the case came to be committed to

the Court of Sessions. Charge came to be framed against the appellant under Sections 498-A and 306 of IPC. The appellant pleaded not guilty to the said charges and claimed to be tried. His defence is of total denial. After going through the evidence adduced by the prosecution, the learned Sessions Judge convicted and sentenced the appellant as stated in para 1 above. Hence, this appeal.

4. I have perused the judgment and order of the learned Sessions Judge and the record pertaining to the present case. Yesterday when the matter was called out, none appeared for the appellant and hence, matter was kept today. Today also none appeared for the appellant, hence, after examining the record in the present case, I am disposing of this appeal on merits in view of the decision of the Supreme Court in the case of **Bani Singh and others Vs. State of U.P.; [1996 Cri.L.J. 3491].**

5. The conviction of the appellant is mainly founded on the dying declaration of Sangita i.e. Exh.44 and the evidence of P.Ws. 4 to 7. P.W.4

Tukaram Korde is the father of Sangita, P.W.5 Yashoda Korde is relative of Sangita. P.W.6 Kashinath Korde is the uncle of Sangita and P.W.7 Santosh Korde is the brother of Sangita.

6. Tukaram Korde has stated that he is the father of Sangita. Sangita was married to the accused. Sometime after the marriage, her husband started harassing her. Her husband asked her to bring dowry from parents. Her husband used to give threats to her. On account of this, Sangita used to frequently come to her parental house and she used to express her woes to her parents and relatives. Tukaram has stated that at the time of incident, Sangita was five months pregnant. Tukaram Korde has further stated that on the date of the incident at about 10.30 a.m. his son Santosh Korde (P.W.7) informed him that Sangita sustained burn injuries and she was admitted in the hospital. They rushed to the hospital. There they found Sangita had sustained injuries on her body. Sangita disclosed that as she was disgusted with ill-treatment and torture at the hands of her husband, she set herself on fire. Tukaram stated

that Sangita died in the hospital itself. Thereafter, he took the body of Sangita to his village and performed funeral rites. The evidence of P.W.6 Kashinath Korde and P.W.7 Santosh Korde is on the same lines as that of Tukaram Korde. P.W.5 Yashodabai has also deposed about the illtreatment and harassment to Sangita. She has also deposed about the demand made by the accused to Sangita. Nothing has been elicited in the cross-examination of these witnesses so as to discard their testimony. I find the evidence of all these four witnesses to be consistent and trustworthy. Hence, I find no hesitation in placing reliance on the same.

7. Besides these two witnesses, the prosecution has examined the mother of the appellant i.e. P.W.1 Chaguna Amle. It is true that Chaguna Amle does not state about the illtreatment and harassment by the appellant to his wife Sangita. This witness has stated that on the date of incident, she heard shouts and hence, she rushed home and she found that Sangita had tried to commit suicide by pouring kerosene on her person. She has

further stated that Sangita had sustained burn injuries and Sangita had disclosed to her that she had set herself on fire. No doubt, this witness does not speak about any illtreatment or harassment at the hands of the accused to Sangita. However, it is pertinent to note that the accused is her son and as such, she is bound to protect him. It is human nature that she would not state about the illtreatment and harassment by her own son to his wife and she would try to protect him. However, from the evidence of this witness, it is clear that Sangita had tried to commit suicide by setting herself on fire. At the time of incident, Sangita was five months pregnant. It is not the defence of the appellant that Sangita sustained burn injuries due to accident while cooking food etc. The mother of the accused has categorically stated that her daughter in law committed suicide. If a lady is five months pregnant, in ordinary course of nature, she would not commit suicide unless she was driven to commit suicide on account of circumstances. There is nothing on record to show that in the cross-examination that Sangita had an extra sensitive nature or she was hot tempered. In such

circumstances, when it has clearly come on record that Sangita committed suicide looking to the fact that the incident took place just after one year of marriage, the presumption under Section 113(A) of the Evidence Act, would come into play. I may hasten to add here that I am not upholding the conviction only on the basis of Section 113(A) but there is sufficient evidence which has been brought on record in the depositions of P.Ws.4 to 7 that Sangita was illtreated and harassed by the appellant and on this count, she committed suicide.

8. Another very important piece of evidence is the dying declaration (Exh.44) of Sangita. In the said dying declaration, Sangita has specifically stated that she was subjected to illtreatment and harassment by her husband and being fed up of the same, she poured kerosene on herself and set herself on fire. The said statement was recorded by P.W.10 P.S.I.Gaikwad after making enquiries with the Doctor whether Sangita was in a fit condition to give her statement. P.W.9 Doctor Kamble has also put his endorsement on the dying declaration that she was fit to give her statement. Dr.Kamble

has also deposed about putting endorsement that Sangita was in a fit state to give statement. The endorsement of the Doctor is found on the dying declaration that the patient was conscious from the beginning to end and she was in a condition to give her statement. Even assuming that the endorsement of the Doctor was not up to the mark, it would be advantageous to refer to a few decisions of the Supreme Court on this aspect. In the case of **Laxman Vs. State of Maharashtra (2002) 6 S.C.C.710,** which is a decision by a five-Judge Bench of the Supreme Court, it has been held therein that "mere absence of Doctor's certification as to fitness of the declarant's state of mind, would not *ipso facto* render the dying declaration unacceptable. The same view is taken in the case of **P.V.Radhakrishna Vs. State of Karnataka [2003 S.C.C. (Cri.) 1679]** and in the case of **Sohanlal alias Shah Vs. State of Punjab [AIR 2003 SC 4466]**.

9. It is true that in the present case there is only one dying declaration and the said dying declaration has been recorded by a Police Officer

i.e. P.W.10 P.S.I.Gaikwad. There is nothing to show that this witness had any motive due to which he would falsely involve the appellant. Moreover, it is well settled that a dying declaration recorded by a police officer can also be relied upon to sustain the conviction and it is not necessary that the dying declaration has to be recorded by the Special Executive Magistrate. In this context, useful reference may be made to the decisions of the Supreme Court in the case of **Kulwant Singh & Ors. Vs. State of Punjab (2004) 9 SCC 257 and Vidya Devi and another Vs. State of Haryana (2004) 9 SCC 476.** Looking to the settled legal position and the evidence on record, I have no hesitation in placing reliance on the dying declaration Exh.44. The said dying declaration itself is sufficient to confirm the conviction, however, in the present case there is also other reliable material on record i.e. the evidence of P.W.4 to P.W.7 which is consistent with the dying declaration and lends full support to the dying declaration.

10. Looking to the evidence on record and other

facts and circumstances of this case, I am of the opinion that the learned Sessions Judge has rightly convicted and sentenced the appellant. Thus, I find no merit in this appeal and the appeal is dismissed.

[V.K.TAHILRAMANI,J.]